

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ANDREW COOK

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:06cv128-RHW

AAA COOPER TRANSPORTATION,
An Alabama Corporation

DEFENDANT

FINAL JUDGMENT APPROVING THIRD PARTY SETTLEMENT
PURSUANT TO SECTION 71-3-71 AND SECTION 71-3-29

THIS CAUSE came on this day to be heard in open court before the undersigned Circuit Court Judge for hearing on [37] a Motion for Approval of Third Party Settlement Pursuant to Section 71-3-71 and Section 71-3-29 of Mississippi Code of 1972, as amended, and the parties appearing herein, and the Court having heard and considered the Motion and having determined that it has full jurisdiction of all of the necessary parties and of the subject matter, is of the opinion that the desired relief should be granted and the Court finds as follows:

I.

That on or about September 24, 2004, Andrew Cook was employed by Southern Pipe and Supply Company at an average weekly wage of approximately \$539.53. On said date while acting in the course and scope of his employment, Andrew Cook was driving a 2005 Ford F350 when he was rear ended by a vehicle driven by Joseph Howard. At the time of the accident, Joseph Howard was in the course and scope of his employment with the Defendant, Southern Pipe and Supply Company. Andrew Cook claims to have injured his ribs, lumbar spine, thoracic spine and whole body during this motor vehicle accident.

II.

Following the accident, Andrew Cook received medical treatment from the following medical providers: Crosby Memorial Hospital, Dr. Jon Schultz, Garden Park Medical Center, Dr. Eric Graham, and Biloxi Regional Medical Center. Dr. Eric Graham placed the Plaintiff at maximum medical improvement on August 18, 2005 and assigned a 5% permanent impairment rating to the whole body and stated he believed the Plaintiff could return to work without restrictions.

III.

That at the time of the aforementioned accident, Andrew Cook's employer, Southern Pipe and Supply Company, was insured through St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers, and pursuant to the Mississippi Workers' Compensation Act, St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers has paid compensation and medical benefits to Andrew Cook in the amount of \$24,031.65 for the injury incurred by Andrew Cook on September 24, 2004. The Employer and Carrier, Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers, accordingly are subrogated to Andrew Cook's rights to recover from third parties to the extent of \$24,031.65 and future workers' compensation benefits. Nevertheless, in conjunction with the settlement proposed herein, Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers, have agreed to accept the payment of \$9,843.75 and waive their remaining statutory subrogation lien in consideration for a full and final settlement and release by Andrew Cook of all claims for past and future indemnity and medical payments pursuant to Section 9(I) of the Mississippi Workers' Compensation Act relating to the accident of September

24, 2004 and further agree to a full and final settlement of any and all subrogation claims they may have against the Defendant in consideration of the above mentioned payment of \$9,843.75.

IV.

This third party action was commenced by Andrew Cook against AAA Cooper Transportation in the U.S. District Court, Southern District of Mississippi, Southern Division.. Throughout these proceedings, the Defendant has continued to deny and protest its liability. Nevertheless, the Defendant has now offered, and Plaintiff, Andrew Cook, has agreed to accept the total sum of \$35,000.00 as settlement to Andrew Cook, in addition to the above mentioned \$9,843.75 statutory subrogation lien for workers' compensation benefits which will be paid by the Defendant, for a total settlement of all claims in the amount of \$44,843.75.

V.

Plaintiff, Andrew Cook has been advised of the precise terms of the settlement and has agreed thereto and understands and appreciates that the proposed settlement would finally terminate all of his claims against the Defendant, AAA Cooper Transportation, as well as any claims for compensation or medical benefits against his Employer and Carrier, Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers.

VI.

The parties hereto have agreed that the Carrier, St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers, shall be paid \$9,843.75; that Andrew Cook and his attorney, Ben F. Galloway shall be paid \$35,000.00, which will be distributed as follows:

- (1) \$7,662.00 in attorney fees to Owen & Galloway, P.L.L.C;
- (2) \$3,381.00 in attorney fees to Stephen Chouest;
- (2) \$874.06 in reimbursement of out of pocket case expense; and
- (3) \$23,082.94 balance to Andrew Cook

In consideration therefore, Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers join in this settlement as evidenced by the executed Joinder filed herein, and agree to fully and finally settle any and all statutory subrogation liens and rights against AAA Cooper Transportation, and have agreed to execute all appropriate documents, including a release, so that the Defendant, AAA Cooper Transportation shall be fully absolved of all future liability respecting the afore-described accident.

VII.

That Andrew Cook has also agreed to execute all appropriate documents, including a release, stating he and his attorney have agreed to satisfy any and all liens arising out of the afore-described accident, including but not limited to, Medicaid and/or Medicare benefits, health/medical insurance benefits and or attorney fee liens and expenses, so that the Defendant, and Employer and Carrier will be absolved of any further liability respecting the Mississippi Workers' Compensation Law, Mississippi Law, or any other law.

VIII.

Jurisdiction to consider approval of this settlement is exclusively vested in this Court by reason of §71-3-71 and § 71-3-29 of the Mississippi Code of 1972, as amended.

IT IS THEREFORE ORDERED AND ADJUDGED:

(1) That the proposed settlement of all aspects of this litigation for the total sum of \$35,000.00 to Andrew Cook, in addition to the payment of the workers' compensation lien in the amount of \$9,843.75, for a total settlement of \$44,843.75 be approved, and that Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers, shall fully and finally settle the statutory subrogation lien.

(2) That Andrew Cook, and Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers are authorized to execute a full, complete and final release and settlement agreement of all claims of every kind and character against the Defendant, AAA Cooper Transportation.

(3) That Andrew Cook is further authorized to execute a full, complete and final release and settlement agreement of all claims of every kind and character against Southern Pipe and Supply Company and St. Paul Fire and Marine Insurance Company d/b/a St. Paul Travelers pursuant to Section 9(i) of the Mississippi Workers' Compensation Law or any other law regarding all claims which have arisen or which may arise in the future in any matter connected with or arising out of the injuries Andrew Cook received on September 24, 2004.

(4) That all parties are authorized and directed to execute all appropriate releases and settlement agreements.

(5) That this action be, and hereby is, fully and finally dismissed with prejudice and with the parties bearing their own costs.

SO ORDERED AND ADJUDGED, this the 31st day of August, 2006.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE

APPROVED BY:

s/Andrew Cook

ANDREW COOK, Plaintiff

s/Ben F. Galloway

BEN F. GALLOWAY, Attorney for Plaintiff

s/Douglas Bagwell

DOUGLAS BAGWELL, Attorney for Defendant

s/Phillip P. Embry

PHILLIP P. EMBRY, Attorney for
Employer and Carrier, Intervenor